

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:06CR192
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
MAURICE HOLBERT,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 29). See "Order on Sentencing Schedule," ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Defendant objects to the quantity of controlled substance attributable to him in ¶¶ 18, 25 and elsewhere and the corresponding base offense level 32. The plea agreement provides pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B) that a base offense level of 28 applies. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 28. However, because the career offender guideline applies,¹ U.S.S.G. § 4B1.1(b)(B), the change will not affect the sentencing guideline range.

¹There is no objection to the application of the career offender guideline.

IT IS ORDERED:

1. The Court's tentative findings are that the Defendant's objections (Filing No. 29) to the PSR are granted, and the plea agreement should be upheld with respect to drug quantity and base offense level;
2. The parties are notified that my tentative findings are that the PSR is correct in all other respects;
3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final; and
5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 3rd day of January, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge